

MONTANA LEGISLATIVE HISTORY

Chapter 278 1995

Bill H 570 S _____ Original bill & history ☒ C

H. Committee on Taxation

Hearing Date(s) 3/6 _____ C

_____ C

_____ C

_____ C

Date Out 3-6 _____ C

S. Committee on Taxation

Hearing Date(s) 3-16 _____ C

_____ C

_____ C

_____ C

Date Out 3-16

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

3/08 Tabled in Committee
 3/29 Missed Transmittal Deadline for 71st Day
 Died in Committee

HB 569 INTRODUCED BY ORR
 REVISE ALLOCATION OF THE METAL MINES LICENSE TAX

2/18	INTRODUCED		
2/18	FIRST READING		
2/18	REFERRED TO TAXATION		
2/20	FISCAL NOTE REQUESTED		
2/27	FISCAL NOTE RECEIVED		
3/01	FISCAL NOTE PRINTED		
3/06	HEARING		
3/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/24	2ND READING PASSED	74	25
3/25	3RD READING PASSED	80	18
	TRANSMITTED TO SENATE		
3/27	FIRST READING		
3/27	REFERRED TO TAXATION		
4/03	HEARING		
4/06	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/07	2ND READING CONCURRED	48	0
4/08	3RD READING CONCURRED	46	2
	RETURNED TO HOUSE WITH AMENDMENTS		
4/10	2ND READING AMENDMENTS CONCURRED	92	8
4/11	3RD READING AMENDMENTS CONCURRED	87	11
4/13	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
5/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 577		
	EFFECTIVE DATE: 07/01/95		

HB 570 INTRODUCED BY WISEMAN, ET AL.
 RELATE TO TAXATION OF REGULATED INVESTMENT COMPANIES AND
 THEIR SHAREHOLDERS

2/20	INTRODUCED		
2/20	FIRST READING		
2/20	REFERRED TO TAXATION		
2/21	FISCAL NOTE REQUESTED		
2/27	FISCAL NOTE RECEIVED		
2/28	FISCAL NOTE PRINTED		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/09	2ND READING PASSED	98	2
3/10	3RD READING PASSED	98	1
	TRANSMITTED TO SENATE		
3/13	FIRST READING		
3/13	REFERRED TO TAXATION		
3/16	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED		
3/24	2ND READING CONCURRED	49	0
3/25	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/27	SIGNED BY SPEAKER		
3/28	SIGNED BY PRESIDENT		
3/28	TRANSMITTED TO GOVERNOR		

3/29 SIGNED BY GOVERNOR
CHAPTER NUMBER 278
EFFECTIVE DATE: 03/29/95

HB 571 INTRODUCED BY HARPER
GENERALLY REVISE DISCLOSURE OF CONFLICT OF INTEREST LAW AND
RULES OF CONDUCT FOR LEGISLATORS

2/20 INTRODUCED
2/20 FIRST READING
3/03 REFERRED TO ETHICS
3/07 HEARING
3/09 HEARING
3/14 HEARING
3/15 HEARING
3/16 HEARING
3/20 HEARING
3/21 HEARING
3/22 HEARING
3/23 TABLED IN COMMITTEE
DIED IN COMMITTEE

HB 572 INTRODUCED BY HARRINGTON, ET AL.
INCREASE TIME IN WHICH AN ECONOMIC DEVELOPMENT LEVY IS
EFFECTIVE TO 6 YEARS FROM 5 YEARS

2/20	INTRODUCED		
2/20	FIRST READING		
2/20	REFERRED TO TAXATION		
2/22	FISCAL NOTE REQUESTED		
2/27	FISCAL NOTE RECEIVED		
3/01	FISCAL NOTE PRINTED		
3/02	HEARING		
3/02	COMMITTEE REPORT—BILL PASSED		
3/04	2ND READING PASSED	88	10
3/06	3RD READING PASSED	92	7
	TRANSMITTED TO SENATE		
3/07	FIRST READING		
3/07	REFERRED TO TAXATION		
3/15	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED		
3/24	2ND READING CONCURRED	49	0
3/25	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/27	SIGNED BY SPEAKER		
3/28	SIGNED BY PRESIDENT		
3/28	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 279		
	EFFECTIVE DATE: 03/29/95		

HB 573 INTRODUCED BY COBB
EXEMPT TOURIST HOMES THAT RENT OR LEASE ACCOMMODATIONS FOR
30 DAYS OR FEWER A YEAR FROM LICENSURE
BY REQUEST OF THE JOINT SUBCOMMITTEE ON HEALTH & HUMAN
SERVICES

2/21 INTRODUCED
2/21 FIRST READING
2/21 REFERRED TO APPROPRIATIONS

House BILL NO. 570

INTRODUCED BY

Wiseman Fisher Evers

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE TAXATION OF REGULATED INVESTMENT COMPANIES AND THEIR SHAREHOLDERS; AMENDING SECTIONS 15-30-111, 15-31-113, 15-31-114, AND 15-31-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, ~~or~~ as that section may be labeled or amended, and in addition ~~shall include~~ includes the following:

(a)(i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof to the extent that the interest is exempt from taxation under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of ~~such~~ the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a)(i) all interest income from obligations of the United States government, the state of Montana,

1 county, municipality, district, or other political subdivision thereof and any other interest income that is
2 exempt from taxation by the states under federal law;

3 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986,
4 as that section may be amended or renumbered, that are attributable to the interest referred to in
5 subsection (2)(a)(i);

6 (b) interest income earned by a taxpayer ~~age~~ who is 65 years of age or older in a taxable year up
7 to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

8 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
9 received as defined in 15-30-101;

10 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

11 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
12 amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess
13 of \$30,000 as shown on the taxpayer's return;

14 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
15 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided
16 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of
17 \$30,000 as shown on their joint return;

18 (d) all Montana income tax refunds or tax refund credits;

19 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

20 (f) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and
21 applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises
22 licensed to provide food, beverage, or lodging;

23 (g) all benefits received under the workers' compensation laws;

24 (h) all health insurance premiums paid by an employer for an employee if attributed as income to
25 the employee under federal law; and

26 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against
27 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

28 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l)
29 shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as
30 provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election

1 is effective.

2 (4) A taxpayer who, in determining federal adjusted gross income, has reduced his business
3 deductions by an amount for wages and salaries for which a federal tax credit was elected under section
4 44B of the Internal Revenue Code of 1954, ~~or~~ as that section may be labeled or amended, is allowed to
5 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be
6 made in the year the wages and salaries were used to compute the credit. In the case of a partnership or
7 small business corporation, the deduction must be made to determine the amount of income or loss of the
8 partnership or small business corporation.

9 (5) Married taxpayers filing a joint federal return who ~~must~~ include part of their social security
10 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the
11 federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad
12 retirement benefits when they file separate Montana income tax returns. The federal base must be split
13 equally on the Montana return.

14 (6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of
15 the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross
16 income up to \$100 per week received as wages or payments in lieu of wages for a period during which the
17 employee is absent from work due to the disability. If the adjusted gross income before this exclusion and
18 before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the
19 exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's
20 eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
21 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined
22 adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable
23 to engage in any substantial gainful activity by reason of any medically determined physical or mental
24 impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of
25 contingency--sec. 3, Ch. 634, L. 1983.)"

26
27 **Section 2.** Section 15-31-113, MCA, is amended to read:

28 **"15-31-113. Gross income and net income.** (1) The term "gross income" means all income
29 recognized in determining the corporation's gross income for federal income tax purposes and:

30 (a) including:

(i) interest exempt from federal income tax and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, ~~as~~ those sections may be amended or renumbered, attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; and

(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, ~~as~~ those sections may be amended or renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) ~~No~~ A corporation is not exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year."

Section 3. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions ~~shall be~~ are allowed from the gross income received by ~~such~~ the corporation within the year from all sources:

(1) ~~(a)~~ (a) ~~All~~ all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation ~~hereinafter~~ contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. ~~No~~ A deduction ~~shall be~~ is not allowed for salaries paid upon which the recipient ~~thereof~~ has not paid Montana state income

tax; ~~provided, however~~ However, that ~~where~~ when domestic corporations are taxed on income derived from ~~without outside~~ the state, salaries of officers paid in connection with securing ~~such the~~ income ~~shall be~~ are deductible.

(2) ~~(a)~~ (b) (i) All ~~all~~ losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, ~~such~~. The allowance ~~to be~~ is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation ~~shall~~ must be the same as the elections made for federal income tax purposes. ~~No A~~ deduction ~~shall be~~ is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and ~~no a~~ deduction ~~shall~~ may not be made for any amount of expense of restoring property or making good the exhaustion ~~thereof~~ of property for which an allowance is or has been made. ~~No A~~ depreciation or amortization deduction ~~shall be~~ is not allowed on a title plant as defined in 33-25-105(15).

~~(b)~~ (ii) There ~~shall be~~ is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

~~(3)~~ (c) ~~In~~ in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, ~~such~~. The reasonable allowance ~~to~~ must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes ~~shall~~ must be the same as the elections made for federal income tax purposes.

~~(4)~~ (d) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived, ~~but no interest shall~~. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from ~~such the~~ property or business would be taxable under this part.

~~(5)~~ (a) ~~(e)~~ (i) ~~Taxes~~ taxes paid within the year, except the following:

~~(i)~~ (A) ~~Taxes~~ taxes imposed by this part;

~~(ii)~~ (B) ~~Taxes~~ taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

1 ~~(iii)~~ (C) ~~Taxes taxes~~ on or according to or measured by net income or profits imposed by authority
2 of the government of the United States;

3 ~~(iv)~~ (D) ~~Taxes taxes~~ imposed by any other state or country upon or measured by net income or
4 profits.

5 ~~(b)~~ (ii) Taxes deductible under this part ~~shall~~ must be construed to include taxes imposed by any
6 county, school district, or municipality of this state.

7 ~~(6)~~ (f) ~~That that~~ portion of an energy-related investment allowed as a deduction under 15-32-103;

8 ~~(7)~~ ~~(a)~~ (g) (i) ~~Except except~~ as provided in subsection ~~(b)~~ (1)(g)(ii), charitable contributions and gifts
9 that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

10 ~~(b)~~ (ii) The public service commission ~~shall~~ may not allow in the rate base of a regulated corporation
11 the inclusion of contributions made under this subsection.

12 ~~(8)~~ (2) In lieu of the deduction allowed under subsection ~~(7)~~ (1)(g), the taxpayer may deduct the
13 fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated
14 technological equipment or apparatus intended for use with the computer donated to an elementary,
15 secondary, or accredited postsecondary school located in Montana if:

16 (a) the contribution is made no later than 5 years after the manufacture of the donated property
17 is substantially completed;

18 (b) the property is not transferred by the donee in exchange for money, other property, or services;
19 and

20 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept
21 the property and representing that the use and disposition of the property will be in accordance with the
22 provisions of ~~(b) of this subsection~~ ~~(8)~~ (2)(b).

23 (3) In the case of a regulated investment company or a fund of a regulated investment company,
24 as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be
25 amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the
26 Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction
27 for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax
28 under this chapter when earned by the regulated investment company. For the purposes of computing the
29 deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code
30 of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is

1 not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal
2 Revenue Code of 1986, as those sections may be amended or renumbered."

3
4 **Section 4.** Section 15-31-119, MCA, is amended to read:

5 **"15-31-119. Net operating losses -- carryovers and carrybacks.** (1) The net operating loss
6 deduction is the aggregate of net operating loss carryovers to the taxable period plus the net operating loss
7 carrybacks to the taxable period.

8 (2) The term "net operating loss" means the excess of the deductions allowed by this section over
9 the gross income, with the modifications specified in subsection (6).

10 (3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained,
11 the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable
12 period of the loss and must be a net operating loss carryover to each of the five taxable periods following
13 the taxable period of the loss.

14 (4) A net operating loss for any taxable period ending after December 31, 1975, in addition to
15 being a net operating loss carryback to each of the three preceding taxable periods, must be a net operating
16 loss carryover to each of the seven taxable periods following the taxable period of the loss.

17 (5) Except as provided in subsection (11), the portion of the loss that must be carried to each of
18 the other taxable years must be the excess, if any, of the amount of the loss over the sum of the net
19 income for each of the prior taxable periods to which the loss was carried. For purposes of ~~the preceding~~
20 ~~sentence~~ this subsection, the net income for the prior taxable period must be computed with the
21 modification specified in subsection (6)(b) and by determining the amount of the net operating loss
22 deduction without regard to the net operating loss for the loss period or any taxable period ~~thereafter~~ after
23 the loss period, and the net income so computed may not be considered to be less than zero.

24 (6) The modifications referred to in subsection (2) are as follows:

25 (a) The net operating loss deduction may not be allowed.

26 (b) The deduction for depletion may not exceed the amount that would be allowable if computed
27 under the cost method.

28 (c) Any net operating loss carried over to any taxable ~~years beginning after December 31, 1978,~~
29 year must be calculated under the provisions of this section effective for the taxable year for which the
30 return claiming the net operating loss carryover is filed.

1 (7) A net operating loss deduction ~~must~~ may be allowed only with regard to losses attributable to
2 the business carried on within the state of Montana.

3 (8) In the case of a merger of corporations, the surviving corporation may not be allowed a net
4 operating loss deduction for net operating losses sustained by the merged corporations prior to the date
5 of merger. In the case of a consolidation of corporations, the new corporate entity may not be allowed a
6 deduction for net operating losses sustained by the consolidated corporations prior to the date of
7 consolidation.

8 (9) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund
9 of tax resulting from a net operating loss carryback or carryover.

10 (10) The net operating loss deduction ~~may not be allowed with respect to taxable periods that~~
11 ~~ended on or before December 31, 1970, but~~ must be allowed only with respect to taxable periods beginning
12 on or after January 1, 1971.

13 (11) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire
14 carryback period. If the election is made, the loss may be carried forward only. The election must be made
15 on or before the date on which the return is due, including any extension of the due date, for the tax year
16 of the net operating loss for which the election is to be in effect. The election is irrevocable for the year
17 made.

18 (12) Notwithstanding any other provision of this section, the net operating loss deduction is not
19 allowed in the case of a regulated investment company or a fund of a regulated investment company, as
20 defined in section 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended
21 or renumbered."

22
23 **NEW SECTION.** **Section 5. Effective date -- retroactive applicability.** [This act] is effective on
24 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after
25 December 31, 1994.

26 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB 570, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act relating to the taxation of regulated investment companies and their shareholders; and providing an immediate effective date and a retroactive applicability date.

FISCAL IMPACT:

This bill has no impact on department expenditures.

Under current law, in terms of interest income from government obligations, only interest income from U.S. obligations, obligations of U.S. territories and possessions, and obligations of the state of Montana and political subdivisions thereof are excluded from Montana taxation. Interest income from obligations of other states and their political subdivisions are taxable. Under the assumption that language amending MCA 15-10-111(2)(a)(i) does not change this, there is no impact from this proposal on individual income tax. However, if the amending language is interpreted to mean that interest income from obligations of other states and their political subdivisions is to be excluded from taxation under Montana law there would be a substantial decrease in revenue from individual income tax under the proposal. (See Technical Note.)

Under current law a regulated investment company is not allowed a deduction for dividends paid to shareholders. Under this proposal, a regulated investment company may take a deduction for dividends it distributes to shareholders. Under this proposal there could be a loss in revenue from corporation income tax attributed to any regulated investment company that currently pays taxes in Montana on dividends paid out. This potential loss in revenue is expected to be minimal.

TECHNICAL NOTE:

This bill amends MCA 15-30-111. The language in the bill amending MCA 15-30-111(2)(a)(i) can be interpreted in two ways. The first interpretation can be taken to mean that all interest income on all government obligations (U.S., other states, etc.) is to be excluded from taxation. The second is that only interest from U.S. obligations and obligations of U.S. territories and possessions (e.g., Puerto Rico and U.S. Virgin Islands) are exempt from taxation by Montana. Under the first interpretation there would be a substantial loss in revenue from individual income tax under this bill.

THE CONCERNS RAISED IN THIS FISCAL NOTE HAVE BEEN RESOLVED THRU TECHNICAL AMENDMENTS WHICH WILL BE AVAILABLE AT COMMITTEE MEETINGS.

William Wiseman

Dave Lewis 2-27-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

William Wiseman 2/28/95
William Wiseman, PRIMARY SPONSOR DATE
Fiscal Note for HB 570, as introduced

HB 570

HOUSE TAXATION

Page 6

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0561	LARSON, DON		INCREASE THE MOTORCYCLE TRAINING FEE TO \$5			
	2/15	3/01	DO PASS	VOTE:		3/02
HB0562	WENNEMAR, KENNETH		DELETE AGRICULTURAL SPECIAL ELIGIBILITY CRITERIA FOR CERTAIN PROPERTY TYPES			
	2/15	3/07	PASS AS AMENDED	VOTE:		3/10
HB0565	ELLIS, ALVIN		ALLOW OWNER OF LIVESTOCK TO BE ASSESSED AND TAXED ON AVERAGE INVENTORY BASIS			
	2/16	3/01	PASS AS AMENDED	VOTE:		3/07
HB0567	HIBBARD, CHASE		REVISE QUALIFIED MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY POLICY			
	3/04		PASS AS AMENDED	VOTE:		3/16
HB0568	FISHER, MARJORIE		PROPERTY TAX ON SKI AREAS SIMILAR TO GOLF COURSES			
	2/16	3/08	TABLED ON 03/08	VOTE:		
HB0569	ORR, SCOTT		REVISE THE ALLOCATION OF THE METAL MINES LICENSE TAX			
	2/18	3/06	PASS AS AMENDED	VOTE:		3/08
HB0570	WISEMAN, WILLIAM		TAXATION OF REGULATED INVESTMENT COMPANIES AND THEIR SHAREHOLDERS			
	2/20	3/06	PASS AS AMENDED	VOTE:		3/07
HB0572	HARRINGTON, DAN		EXTEND ECONOMIC DEVELOPMENT LEVY TO 6 YEARS			
	2/20	3/02	DO PASS	VOTE:		3/02
HB0574	REHBEIN, WILLIAM		PRIVATIZE STATE LIQUOR STORES TO FRANCHISE LIQUOR STORES			
	2/21			VOTE:	BUSINESS & LABOR	
HB0582	BOHARSKI, WILLIAM		TUITION TAX CREDIT FOR ELEMENTARY AND SECONDARY TUITION PAID			
	3/04	3/09	TABLED ON 03/22	VOTE:		
HB0583	EWER, DAVID		REVISE SCHOOL FUNDING BY REDUCING STATE LEVY AND INCREASING GAMBLING TAX			
	3/06	3/13	TABLED ON 03/21	VOTE:		
HB0586	WYATT, DIANA		CERTAIN COUNTY MILL LEVIES ARE ONLY AGAINST PROPERTY NOT IN CITY OR TOWN			
	3/07	3/10	TABLED ON 03/10	VOTE:		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By CHAIRMAN CHASE HIBBARD, on March 6, 1995, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Chase Hibbard, Chairman (R)
Rep. Marian W. Hanson, Vice Chairman (Majority) (R)
Rep. Robert R. "Bob" Ream, Vice Chairman (Minority) (D)
Rep. Peggy Arnott (R)
Rep. John C. Bohlinger (R)
Rep. Jim Elliott (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Rick Jore (R)
Rep. Judy Murdock (R)
Rep. Thomas E. Nelson (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. John "Sam" Rose (R)
Rep. William M. "Bill" Ryan (D)
Rep. Roger Somerville (R)
Rep. Robert R. Story, Jr. (R)
Rep. Emily Swanson (D)
Rep. Jack Wells (R)
Rep. Kenneth Wennemar (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lee Heiman, Legislative Council
Donna Grace, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 255
	HB 569
	HB 570
Executive Action:	HB 565 - Do Pass as Amended
	SB 152 - Tabled
	SB 255 - Be Concurred In
	HB 570 - Do Pass as Amended

students a year. With the additional appropriation, they can double that number. He commented that 90% of the graduates stay in Montana.

Closing by Sponsor:

REP. ORR closed by commenting that the discussion had increased everyone's knowledge of the RIT.

HEARING ON HB 570

Opening Statement by Sponsor:

REP. BILL WISEMAN, House District 41, Great Falls, said HB 570 deals with regulated investment funds which is another name for a mutual fund. HB 570 would correct a problem that exists in Montana. He explained that large and highly populated states have mutual in-state funds that are invested in tax-free bonds by the residents of that state. Montana has no state fund because of the tax structure. There is nothing in the tax code to keep a corporation that forms a mutual fund from having to pay Montana corporate tax. This bill would relieve that situation so that an in-state fund can be organized for small investors who would like to invest in Montana tax free bonds through a mutual fund.

Proponents' Testimony:

Bruce A. MacKenzie, D. A. Davidson & Co., testified in support of the bill. A written copy of his testimony is attached. EXHIBIT 4. He offered an amendment to the bill which would clarify that only Montana bonds would be tax free. EXHIBIT 5.

Tom Harrison, C.P.A., Montana Association of Certified Public Accountants, said HB 570 is a pro-Montana bill and would be beneficial to the people of Montana.

Opponents' Testimony:

None.

{Tape: 2; Side: B.}

Questions From Committee Members and Responses:

REP. NELSON asked if passage of the bill would result in an increase of mutual funds enabling more investment by endowment funds. Mr. MacKenzie said it would provide the opportunity for greater diversity within Montana.

Closing by Sponsor:

REP. WISEMAN said he wanted to make it clear that he had no conflict of interest in the bill. He supports the bill because

it would allow small Montana investors to be offered shares in a Montana fund.

EXECUTIVE ACTION ON HB 565

CHAIRMAN HIBBARD explained that, for the purposes of livestock taxation, the entire livestock inventory is reported as of February 1. There are two kinds of taxation -- the per capita head tax which funds the activities of the Department of Livestock (DOL) and the ad valorem tax which is the property tax on livestock. Animals under 24 months of age are exempt from the ad valorem tax but all animals are subject to the per capita tax. HB 565 would provide the option to elect to use an average inventory for payment of the ad valorem tax. The change would allow for payment of taxes in more than one county for the period of time the cattle reside in each county.

Motion:

REP. BOHLINGER MOVED THAT HB 565 DO PASS.

Discussion:

Mr. Heiman advised he had prepared amendments for Rep. Ellis and the DOL had given him two additional sets of amendments. EXHIBITS 6, 7 and 8.

Motion/Vote:

REP. REAM MOVED THAT THE AMENDMENT PROPOSED BY REP. ELLIS TO DELETE SECTION 4 OF THE BILL BE ADOPTED. The motion passed unanimously.

Vote:

REP. ROSE MOVED THE SECOND SET OF AMENDMENTS DO PASS.

Discussion:

CHAIRMAN HIBBARD said this amendment would allow those who wish to select the average inventory basis to do so. The proposed amendment would allow the per capita for under 24-month cattle to be assessed on a date certain basis and on the average inventory for those over 24 months.

REP. ARNOTT asked if this would complicate recordkeeping. **CHAIRMAN HIBBARD** said the reason the law was changed from average inventory in the first place was because "it was a nightmare." February 1 works for the majority of producers but there are situations when the average inventory would be preferable. This would allow those producers to use the average inventory in a more equitable fashion. The amendment will make recordkeeping easier for the DOR and DOL.

EXECUTIVE ACTION ON HB 570

Motion:

REP. REAM MOVED THAT HB 570 DO PASS.

Discussion:

REP. REAM said there was an amendment to the bill that would clarify that the tax free income from government obligations applies only to U.S. territories and the State of Montana and not to other states.

Motion/Vote:

REP. REAM MOVED THAT THE AMENDMENTS TO HB 570 BE ADOPTED. The motion passed unanimously.

Motion\Vote:

REP. REAM MOVED THAT HB 570 AS AMENDED DO PASS. The motion passed unanimously.

HOUSE OF REPRESENTATIVES

Taxation

ROLL CALL

DATE March 6, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Chase Hibbard, Chairman	✓		
Rep. Marian Hanson, Vice Chairman, Majority	✓		
Rep. Bob Ream, Vice Chairman, Minority	✓		
Rep. Peggy Arnott	✓		
Rep. John Bohlinger	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Rick Jore	✓		
Rep. Judy Rice Murdock	✓		
Rep. Tom Nelson	✓		
Rep. Scott Orr	✓		
Rep. Bob Raney	✓		
Rep. Sam Rose	✓		
Rep. Bill Ryan	✓		
Rep. Roger Somerville	✓		
Rep. Robert Story	✓		
Rep. Emily Swanson	✓		
Rep. Jack Wells	✓		
Rep. Ken Wennemar	✓		

REASONS FOR AMENDMENT

Under current Montana tax law, a mutual fund seeking to organize in Montana and to offer to Montana residents shares in a fund investing in a portfolio of Montana municipal obligations is under a distinct disadvantage. This is because the mutual fund is subject to corporate-level Montana income tax on the interest it earns on the Montana municipal obligations. This treatment is in contrast to the general pass-through treatment that mutual funds enjoy under federal law and the laws of most other states. The bill is designed to remedy this situation by providing pass-through treatment for a mutual fund investing in Montana Obligations. The bill also clarifies the Montana income tax treatment of both individual and corporate shareholders of a mutual fund investing in Montana municipal obligations, a subject not currently addressed by the Montana statutes.

Under current Montana law, corporations are subject to tax on income they earn from interest paid on municipal obligations, including obligations of the State of Montana and its political subdivisions and agencies ("Montana Obligations"). A mutual fund is taxable as a corporation. Under Subchapter M of the Internal Revenue Code (the "Code"), a mutual fund, if it qualifies as a "regulated investment company" (or "RIC"), is treated as a modified "pass-through" entity by being allowed a "dividends paid deduction" to the extent that it distributes its taxable income to shareholders. Under the Code, however, a RIC cannot claim a dividends paid deduction when it distributes income it has earned as interest on

municipal obligations, because such income is already excluded from its gross income under Code Section 103.

Under the current interpretation of the Montana Corporation License Tax Act, corporations are entitled for Montana tax purposes to all the deductions to which they are entitled under federal law, unless such a deduction is expressly prohibited by Montana law. See, e.g., Baker Bancorporation, Inc. v. Department of Revenue, 657 P.2d 89 (Mont. 1982). Thus, under current law a RIC taxable in Montana would be entitled to receive the dividends paid deduction with respect to income it distributed to shareholders except for income earned from municipal obligations (including Montana Obligations). The result is an unintended anomaly: a Montana mutual fund can be formed to invest in taxable stocks or bonds, but cannot be formed to invest primarily in Montana Obligations. If it did so, it would operate at a competitive disadvantage to a RIC formed elsewhere, since it would lack the principal advantage associated with RICs – i.e., exemption from corporate-level tax. This situation is contrary to the taxation of similar RICs provided by virtually every other state.

The above disadvantage to mutual funds investing in Montana Obligations was confirmed in a Declaratory Ruling issued by the Montana Department of Revenue in the matter of the Petition of D.A. Davidson & Co. (Docket No. CT-93-28) on July 6, 1993. The petitioner had sought a ruling that a mutual fund organized in Montana could claim the dividends paid deduction with respect to dividends it paid that were attributable to interest on Montana

Obligations. The Department held, however, that Montana law did not provide a dividends paid deduction in this case. The result was that, even if the mutual fund distributed all of its interest income on Montana Obligations to shareholders, it would be taxed at the corporate level on that income.

To remedy this situation, the bill would treat RICs for Montana purposes the same way as they are treated for federal purposes, as modified pass-through entities. This is accomplished principally by amending 15-31-114, MCA, to provide that RICs may claim a "dividends paid deduction" generally for all dividends paid during the year to shareholders that are attributable to income that is taxable by Montana when earned by a corporation (including interest on Montana Obligations). An amendment is also made to 15-31-119, MCA, denying RICs the ability to claim a net operating loss deduction, in order to conform their treatment to federal law.

At the level of the RIC shareholders, the bill provides that all shareholders, corporate as well as individual, would generally be taxed on the dividends they receive from a RIC. This is accomplished by amending 15-30-111, MCA (for individuals) and 15-31-113, MCA (for corporations), to require shareholders generally to include "exempt-interest dividends" in their Montana taxable income. "Exempt-interest dividends" are mutual fund dividends that are exempt from federal tax because they are derived from interest on municipal obligations. Under the amendment to 15-30-111, MCA, individual shareholders would be taxed on "exempt-interest dividends" paid by a RIC except to the extent

that these dividends are derived from interest on Montana Obligations or from other income that Montana is prohibited from taxing by federal law. Under 15-30-111(1)(a), MCA, as currently existing, individuals are already exempt from Montana tax on income earned from Montana Obligations held directly, and the same exemption should apply if the Montana Obligations are held through a mutual fund. The Department of Revenue has already so ruled in the Declaratory Ruling issued to D.A. Davidson & Co. on July 6, 1993. The bill would merely codify this ruling.

The bill provides that "exempt-interest dividends" are exempt in the hands of an individual shareholder if derived from income that Montana is prohibited from taxing by federal law in order to ensure exemption for dividends derived from interest on the obligations of a U.S. territory or possession – i.e., Puerto Rico, Guam, etc. Federal law provides that interest on the obligations of such territories and possessions is exempt from state taxation. See, e.g., 48 U.S.C. § 745 (Puerto Rico), 48 U.S.C. § 1403 (U.S. Virgin Islands), 48 U.S.C. § 1423a (Guam). The bill therefore merely clarifies that this exemption extends to mutual fund dividends attributable to such interest. The bill does not exempt dividends paid to individual shareholders that are attributable to interest paid on the obligations of the fifty states other than Montana. Such dividends will remain subject to Montana tax in the hands of both individual and corporate shareholders.

We respectfully submit this legislation is essential in order to establish a Montana Municipal fund and urge a do pass recommendation. Thankyou.

**Statement of Bruce A. MacKenzie
Representing D.A. Davidson & Co
Supporting House Bill 570**

ILLUSTRATION

Mutual Fund (Other than Montana Bonds)

Total Portfolio	\$100,000,000	
Investment Income (5%)	\$5,000,000	
Less Administrative Fees (1%)	- 50,000	
Less Dividends Paid (98%)	<u>- 4,850,000</u>	
Total Income Subject to State Tax	<u>\$ 50,000</u>	
Corporate License Tax (6.75% First 500,000)	\$ (3,375)	
Investment Income Available to Distribute	\$ 4,850,000	
Rate of Return to Investor	<u>4.85%</u>	

Mutual Fund (Exclusively Montana Bonds)

Total Portfolio	\$100,000,000	
Investment Income (5%)	\$5,000,000	
Less Administrative Fees (1%)	- 50,000	
Total Income Subject to State Tax	<u>\$ 4,950,000</u>	
Corporate License Tax (6.75% First \$500,000)	\$ 33,750	
(7.25% of Excess)	<u>322,625</u>	
Total Montana Taxes Paid	<u>\$ (356,375)</u>	
Investment Income Available to Distribute	\$ 4,593,675	
Rate of Return to Investor	<u>4.59%</u>	

EXHIBIT 5
DATE 3/6/95
HB 570

Amendments to House Bill No. 570
First Reading Copy

For the Committee on Taxation

Prepared by Lee Heiman
February 28, 1995

1. Page 1, line 16.
Following: "thereof"
Insert: "except"
Following: "taxation"
Insert: "by Montana"

2. Page 2, line 2.
Strike: "the states"
Insert: "Montana"

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. HB 570
 DATE 3/6/95 SPONSOR(S) Rep. Wiseman

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Bruce A. MacKenzie	D.A. Davidson & Co. / SEA	HB 570		X
Tom Harmon	Int. Soc. of CPAs			X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.



HOUSE STANDING COMMITTEE REPORT

March 6, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that House Bill 570 (first reading copy -- white) do pass as amended.

Signed: _____

A handwritten signature in dark ink, appearing to read "Chase Hibbard", is written over a horizontal line.

Chase Hibbard, Chair

And, that such amendments read:

1. Page 1, line 16.
Following: "thereof"
Insert: "except"
Following: "taxation"
Insert: "by Montana"
2. Page 2, line 2.
Strike: "the states"
Insert: "Montana"

-END-

Committee Vote:
Yes 20, No 0.

521409SC.Hbk

SENATE TAXATION

Page 3

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0534	HARRINGTON, DAN	PROPERTY TAXATION OF UNDEVELOPED OR PLANNED INDUSTRIAL PARKS	3/07	3/15	CONCUR	3/15	VOTE:	3/16
HB0545	MURDOCK, JUDY	IMPROVEMENTS TO REMOVE BARRIERS IN COMMERCIAL BUILDINGS -- EXEMPTION	3/27	3/30	CONCUR	3/30	VOTE:	3/30
HB0550	KASTEN, BETTY LOU	SIMPLIFY AND IMPROVE WAGE-BASED REPORTING OF CERTAIN TAXES	3/21	3/29	CONCUR AS AMENDED	3/30	VOTE:	3/30
HB0561	LARSON, DON	INCREASE THE MOTORCYCLE TRAINING FEE TO \$5	3/09	3/16	CONCUR	4/4	VOTE:	4/04
HB0562	WENNEMAR, KENNETH	DELETE AGRICULTURAL SPECIAL ELIGIBILITY CRITERIA FOR CERTAIN PROPERTY TYPES	3/27	3/30	CONCUR	4/3	VOTE:	4/03
HB0565	ELLIS, ALVIN	ALLOW OWNER OF LIVESTOCK TO BE ASSESSED AND TAXED ON AVERAGE INVENTORY BASIS	3/13	3/16	CONCUR AS AMENDED	4/5	VOTE:	4/05
HB0569	ORR, SCOTT	REVISE THE ALLOCATION OF THE METAL MINES LICENSE TAX	3/27	4/03	CONCUR AS AMENDED	4/6	VOTE:	4/06
HB0570	WISEMAN, WILLIAM	TAXATION OF REGULATED INVESTMENT COMPANIES AND THEIR SHAREHOLDERS	3/13	3/16	CONCUR	3/16	VOTE:	3/16
HB0572	HARRINGTON, DAN	EXTEND ECONOMIC DEVELOPMENT LEVY TO 6 YEARS	3/07	3/15	CONCUR	3/15	VOTE:	3/16
HB0587	QUILICI, JOE	GENERALLY REVISE CIGARETTE AND TOBACCO LAWS	3/27	3/30	CONCUR AS AMENDED	4/7	VOTE:	4/07
HB0588	OHS, KARL	CLARIFY REFUND PROVISIONS OF PROPERTY TAXES RELATED TO CERTAIN ERRORS	3/27	3/30	CONCUR	3/30	VOTE:	3/30
HB0589	GRADY, ED	EXEMPT FRATERNAL LODGES FROM BENEFICIAL USE TAX	3/27	4/03	TABLED ON	04/04	VOTE:	

HOUSE BILL NO. 570
INTRODUCED BY WISEMAN, FISHER, EWER

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE TAXATION OF REGULATED INVESTMENT COMPANIES AND THEIR SHAREHOLDERS; AMENDING SECTIONS 15-30-111, 15-31-113, 15-31-114, AND 15-31-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, ~~or~~ as that section may be labeled or amended, and in addition ~~shall include~~ includes the following:

(a)(i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof EXCEPT to the extent that the interest is exempt from taxation BY MONTANA under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of ~~such~~ the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a)(i) all interest income from obligations of the United States government, the state of Montana,

1 county, municipality, district, or other political subdivision thereof and any other interest income that is
2 exempt from taxation by the state of MONTANA under federal law;

3 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986,
4 as that section may be amended or renumbered, that are attributable to the interest referred to in
5 subsection (2)(a)(i);

6 (b) interest income earned by a taxpayer ~~age~~ who is 65 years of age or older in a taxable year up
7 to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

8 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
9 received as defined in 15-30-101;

10 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

11 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
12 amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess
13 of \$30,000 as shown on the taxpayer's return;

14 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
15 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided
16 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of
17 \$30,000 as shown on their joint return;

18 (d) all Montana income tax refunds or tax refund credits;

19 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

20 (f) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and
21 applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises
22 licensed to provide food, beverage, or lodging;

23 (g) all benefits received under the workers' compensation laws;

24 (h) all health insurance premiums paid by an employer for an employee if attributed as income to
25 the employee under federal law; and

26 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against
27 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

28 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l)
29 shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as
30 provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election

1 is effective.

2 (4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ business
3 deductions by an amount for wages and salaries for which a federal tax credit was elected under section
4 44B of the Internal Revenue Code of 1954, ~~or~~ as that section may be labeled or amended, is allowed to
5 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be
6 made in the year the wages and salaries were used to compute the credit. In the case of a partnership or
7 small business corporation, the deduction must be made to determine the amount of income or loss of the
8 partnership or small business corporation.

9 (5) Married taxpayers filing a joint federal return who ~~must~~ include part of their social security
10 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the
11 federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad
12 retirement benefits when they file separate Montana income tax returns. The federal base must be split
13 equally on the Montana return.

14 (6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of
15 the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross
16 income up to \$100 per week received as wages or payments in lieu of wages for a period during which the
17 employee is absent from work due to the disability. If the adjusted gross income before this exclusion and
18 before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the
19 exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's
20 eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
21 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined
22 adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable
23 to engage in any substantial gainful activity by reason of any medically determined physical or mental
24 impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of
25 contingency--sec. 3, Ch. 634, L. 1983.)"

26

27 **Section 2.** Section 15-31-113, MCA, is amended to read:

28 **"15-31-113. Gross income and net income.** (1) The term "gross income" means all income
29 recognized in determining the corporation's gross income for federal income tax purposes and:

30 (a) including:

(i) interest exempt from federal income tax and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, ~~as those sections may be amended or renumbered~~, attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; and

(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, ~~as those sections may be amended or renumbered~~, when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) ~~No~~ A corporation is not exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year."

Section 3. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions ~~shall be~~ are allowed from the gross income received by ~~such~~ the corporation within the year from all sources:

~~(1) (a) All~~ (a) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation ~~hereinafter~~ contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. ~~No~~ A deduction ~~shall be~~ is not allowed for salaries paid upon which the recipient ~~thereof~~ thereof has not paid Montana state income

1 tax; ~~provided, however~~ However, that where when domestic corporations are taxed on income derived
2 from ~~without outside~~ the state, salaries of officers paid in connection with securing ~~such the~~ income ~~shall~~
3 ~~be are~~ deductible.

4 ~~(2) (a) (b) (i)~~ All all losses actually sustained and charged off within the year and not compensated
5 by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of
6 property used in the trade or business, ~~such. The~~ allowance ~~to be is~~ determined according to the provisions
7 of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for
8 depreciation ~~shall must~~ be the same as the elections made for federal income tax purposes. ~~No A~~ deduction
9 ~~shall be is not~~ allowed for any amount paid out for any buildings, permanent improvements, or betterments
10 made to increase the value of any property or estate, and ~~no a~~ deduction ~~shall may not~~ be made for any
11 amount of expense of restoring property or making good the exhaustion ~~thereof of property~~ for which an
12 allowance is or has been made. ~~No A~~ depreciation or amortization deduction ~~shall be is not~~ allowed on a
13 title plant as defined in 33-25-105(15).

14 ~~(b) (ii)~~ There ~~shall be is~~ allowed as a deduction for the taxable period a net operating loss deduction
15 determined according to the provisions of 15-31-119.

16 ~~(3) (c)~~ In in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable
17 allowance for depletion and for depreciation of improvements; ~~such. The~~ reasonable allowance ~~to must~~ be
18 determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All
19 elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and
20 development costs and intangible drilling expenses for corporation license tax purposes ~~shall must~~ be the
21 same as the elections made for federal income tax purposes.

22 ~~(4) (d)~~ The amount of interest paid within the year on its indebtedness incurred in the operation
23 of the business from which its income is derived; ~~but no interest shall.~~ Interest may not be allowed as a
24 deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property
25 or for the conduct of business unless the income from ~~such the~~ property or business would be taxable
26 under this part.

27 ~~(5) (a) (e) (i)~~ Taxes taxes paid within the year, except the following:

28 ~~(i) (A)~~ Taxes taxes imposed by this part;

29 ~~(iii) (B)~~ Taxes taxes assessed against local benefits of a kind tending to increase the value of the
30 property assessed;

1 ~~(iii)~~ (C) ~~Taxes~~ taxes on or according to or measured by net income or profits imposed by authority
2 of the government of the United States;

3 ~~(iv)~~ (D) ~~Taxes~~ taxes imposed by any other state or country upon or measured by net income or
4 profits.

5 ~~(b)~~ (ii) Taxes deductible under this part ~~shall~~ must be construed to include taxes imposed by any
6 county, school district, or municipality of this state.

7 ~~(6)~~ (f) ~~That~~ that portion of an energy-related investment allowed as a deduction under 15-32-103;

8 ~~(7)~~ ~~(a)~~ (g) (i) ~~Except~~ except as provided in subsection ~~(b)~~ (1)(g)(ii), charitable contributions and gifts
9 that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

10 ~~(b)~~ (ii) The public service commission ~~shall~~ may not allow in the rate base of a regulated corporation
11 the inclusion of contributions made under this subsection.

12 ~~(8)~~ (2) In lieu of the deduction allowed under subsection ~~(7)~~ (1)(g), the taxpayer may deduct the
13 fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated
14 technological equipment or apparatus intended for use with the computer donated to an elementary,
15 secondary, or accredited postsecondary school located in Montana if:

16 (a) the contribution is made no later than 5 years after the manufacture of the donated property
17 is substantially completed;

18 (b) the property is not transferred by the donee in exchange for money, other property, or services;
19 and

20 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept
21 the property and representing that the use and disposition of the property will be in accordance with the
22 provisions of ~~(b)~~ of this subsection ~~(8)~~ (2)(b).

23 (3) In the case of a regulated investment company or a fund of a regulated investment company,
24 as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be
25 amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the
26 Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction
27 for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax
28 under this chapter when earned by the regulated investment company. For the purposes of computing the
29 deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code
30 of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is

1 not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal
2 Revenue Code of 1986, as those sections may be amended or renumbered."

3
4 **Section 4.** Section 15-31-119, MCA, is amended to read:

5 **"15-31-119. Net operating losses -- carryovers and carrybacks.** (1) The net operating loss
6 deduction is the aggregate of net operating loss carryovers to the taxable period plus the net operating loss
7 carrybacks to the taxable period.

8 (2) The term "net operating loss" means the excess of the deductions allowed by this section over
9 the gross income, with the modifications specified in subsection (6).

10 (3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained,
11 the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable
12 period of the loss and must be a net operating loss carryover to each of the five taxable periods following
13 the taxable period of the loss.

14 (4) A net operating loss for any taxable period ending after December 31, 1975, in addition to
15 being a net operating loss carryback to each of the three preceding taxable periods, must be a net operating
16 loss carryover to each of the seven taxable periods following the taxable period of the loss.

17 (5) Except as provided in subsection (11), the portion of the loss that must be carried to each of
18 the other taxable years must be the excess, if any, of the amount of the loss over the sum of the net
19 income for each of the prior taxable periods to which the loss was carried. For purposes of ~~the preceding~~
20 ~~sentence~~ this subsection, the net income for the prior taxable period must be computed with the
21 modification specified in subsection (6)(b) and by determining the amount of the net operating loss
22 deduction without regard to the net operating loss for the loss period or any taxable period ~~thereafter~~ after
23 the loss period, and the net income so computed may not be considered to be less than zero.

24 (6) The modifications referred to in subsection (2) are as follows:

25 (a) The net operating loss deduction may not be allowed.

26 (b) The deduction for depletion may not exceed the amount that would be allowable if computed
27 under the cost method.

28 (c) Any net operating loss carried over to any taxable ~~years beginning after December 31, 1978,~~
29 year must be calculated under the provisions of this section effective for the taxable year for which the
30 return claiming the net operating loss carryover is filed.

1 (7) A net operating loss deduction ~~must~~ may be allowed only with regard to losses attributable to
2 the business carried on within the state of Montana.

3 (8) In the case of a merger of corporations, the surviving corporation may not be allowed a net
4 operating loss deduction for net operating losses sustained by the merged corporations prior to the date
5 of merger. In the case of a consolidation of corporations, the new corporate entity may not be allowed a
6 deduction for net operating losses sustained by the consolidated corporations prior to the date of
7 consolidation.

8 (9) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund
9 of tax resulting from a net operating loss carryback or carryover.

10 (10) The net operating loss deduction ~~may not be allowed with respect to taxable periods that~~
11 ~~ended on or before December 31, 1970, but~~ must be allowed only with respect to taxable periods beginning
12 ~~on or after January 1, 1971.~~

13 (11) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire
14 carryback period. If the election is made, the loss may be carried forward only. The election must be made
15 on or before the date on which the return is due, including any extension of the due date, for the tax year
16 of the net operating loss for which the election is to be in effect. The election is irrevocable for the year
17 made.

18 (12) Notwithstanding any other provision of this section, the net operating loss deduction is not
19 allowed in the case of a regulated investment company or a fund of a regulated investment company, as
20 defined in section 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended
21 or renumbered."

22
23 **NEW SECTION.** **Section 5. Effective date -- retroactive applicability.** [This act] is effective on
24 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after
25 December 31, 1994.

26 -END-

1 HOUSE BILL NO. 570

2 INTRODUCED BY WISEMAN, FISHER, EWER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE TAXATION OF REGULATED INVESTMENT
5 COMPANIES AND THEIR SHAREHOLDERS; AMENDING SECTIONS 15-30-111, 15-31-113, 15-31-114,
6 AND 15-31-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
7 APPLICABILITY DATE."
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By CHAIRMAN GERRY DEVLIN, on March 16, 1995, at 8:00 a.m.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Mike Foster, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Delwyn Gage (R)
Sen. Lorents Grosfield (R)
Sen. John G. Harp (R)
Sen. Dorothy Eck (D)
Sen. Barry "Spook" Stang (D)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Jeff Martin, Legislative Council
Renée Podell, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 561, HB 565, HB 570, SB 419
Executive Action: HB 570, HB 418

HEARING ON HB 565

Opening Statement by Sponsor:

REP. ALVIN ELLIS, JR., SD 23, Red Lodge, declared HB 565 which allows cattle (livestock) that are taxed on the ad valorem basis to be taxed on an average inventory basis. He stated this bill was originally put into a form which dealt with all cattle, however, there was a problem with the Department of Livestock on that issue. He acknowledged as a result, this bill only affects ad valorem cattle in it's present state. REP. ELLIS explained his cattle winter in Yellowstone County and all the kids and their parents who work for the ranch go to school in Carbon County. He stated Carbon County doesn't get any of the tax revenue from the cattle. He attested this bill would allow him

to report the cattle in both counties. He acknowledged he has trouble with the fiscal note and requested the committee to ask a representative from the DOR to explain the fiscal note.

Proponents' Testimony:

Cork Mortensen, Executive Secretary, Board of Livestock, declared support for HB 565 in it's present form.

Chris Mehus, Montana Stockgrowers Association, spoke in support of this legislation. He stated it gives the producers the option to be taxed on an average inventory basis.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

SEN. LORENTS GROSFIELD asked Mick Robinson why the law got changed in the last few years. Mr. Robinson stated he isn't sure if the change took place for administrative purposes or exactly why. SEN. GROSFIELD stated it used to be the owner had the option on an annual basis. Mr. Robinson said the DOR may need to review the issue in terms of the next legislative session. SEN. GROSFIELD asked Mr. Robinson about the fiscal note having a slight decrease in both local government and property tax revenue and questioned why there would be a decrease. Mr. Robinson responded taxpayers can elect one way or another and for the most part they would elect for the lower taxation. SEN. GROSFIELD asked Mr. Robinson why it will cost \$21,000.00. Mr. Robinson responded the personal property tax is part of a computerized system and to change the system there are costs.

Closing by Sponsor:

REP. ELLIS commented the amount of revenue loss that will concur is going to be very small. He stated he wants his taxes to go where the school he supports is located.

HEARING ON HB 570

Opening Statement by Sponsor:

REP. WILLIAM R. WISEMAN, HD 41, Great Falls, commented there are all kinds of mutual funds. He stated one of the problems in Montana is the tax situation. REP. WISEMAN said this bill is for small investors in the State of Montana. He explained larger states have mutual funds that are organized for the small investors with a portfolio of tax free bonds from that state. He

submitted an illustration prepared by Bruce A. MacKenzie,
D.A. Davidson & Co. EXHIBIT 1.

Proponents' Testimony:

Tom Harrison, Montana Society of Certified Public Accountants,
announced this bill encourages growth in Montana.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

SEN. MACK COLE asked REP. WISEMAN why this is just for the small investor. REP. WISEMAN stated generally speaking people who have large sums of money in municipal bonds will invest direct.

SEN. MIKE FOSTER asked REP. WISEMAN about the technical note in reference to the two interpretations in this bill. REP. WISEMAN commented this applies only to Montana and the other commonwealths referring to Page 1, Lines 16 and 17.

Closing by Sponsor:

REP. WISEMAN said there is no implication on the State of Montana. He commented the state isn't losing any taxes because there aren't any mutual funds in the state. He emphasized this is not for his firm, it is for D.A. Davidson & Co.

EXECUTIVE ACTION ON HB 570

Motion/Vote: SEN. DELWYN GAGE MOVED HB 570 BE CONCURRED IN.
MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 418

Motion: SEN. GROSFIELD MOVED THE AMENDMENTS.

Discussion: Mr. Martin explained the amendments SEN. GROSFIELD proposed.

Vote: MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. GAGE MOVED HB 418 BE CONCURRED IN AS AMENDED.
MOTION CARRIED UNANIMOUSLY.

Statement of Bruce A. MacKenzie
Representing D.A. Davidson & Co
Supporting House Bill 570

SENATE TAXATION

DATE March 16, 1995

AMENDMENT NO. 1

BILL NO. HB 570

ILLUSTRATION

Mutual Fund (Other than Montana Bonds)

Total Portfolio	\$100,000,000	
Investment Income (5%)		\$5,000,000
Less Administrative Fees (1%)		- 50,000
Less Dividends Paid (98%)		- 4,850,000
Total Income Subject to State Tax		\$ 50,000
Corporate License Tax (6.75% First 500,000)	\$	3,375
Investment Income Available to Distribute	\$	4,850,000
Rate of Return to Investor		<u>4.85%</u>

Mutual Fund (Exclusively Montana Bonds)

Total Portfolio	\$100,000,000	
Investment Income (5%)		\$5,000,000
Less Administrative Fees (1%)		- 50,000
Total Income Subject to State Tax		\$ 4,950,000
Corporate License Tax (6.75% First \$500,000)	\$	33,750
(7.25% of Excess)		322,625
Total Montana Taxes Paid	\$	356,325
Investment Income Available to Distribute	\$	4,593,675
Rate of Return to Investor		<u>4.59%</u>

**MONTANA SENATE
1995 LEGISLATURE
TAXATION COMMITTEE**

ROLL CALL

DATE _____

March 16, 1995

[illegible]

SEN:1995

wp.rollcall.man

CS-09

DATE

March 16, 1995

SENATE COMMITTEE ON

Taxation

BILLS BEING HEARD TODAY:

HB 561 Rep. Larson

HB 565 Rep. Ellis HB 570 Rep. Wiseman

SB 419 Senator Hage

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
DAL Smith	MMSA AMA	HB 561	✓	
Cork Montenson	Brd. of Livestock	HB 565		
Chris Mehurs	MSGA	HB 565	✓	
Clara Spotted Elk	Northern Ariz Tribe	SB 419		
TOM Harrison	MT. Soc of CPAs	HB 570	✓	
Will Smith - McQuire	ABATE of MT	HB 561	✓	
Carole McCrea	CS4K Tribes	SB 419	✓	
Tracy Charles King	Elk Creek Tribal Council	SB 419	-	
Don K. Farn	Blackfoot Tribe	SB 419		
Steve Chestnut	Northern Cheyenne Tribe	SB 419		
Steve Archambault	Archambault & Co	SB 419	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

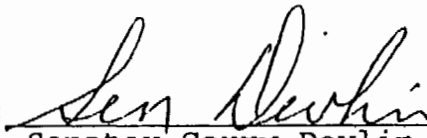
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 16, 1995

MR. PRESIDENT:

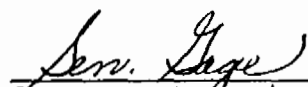
We, your committee on Taxation having had under consideration HB 570 (third reading copy -- blue), respectfully report that HB 570 be concurred in.

Signed:


Senator Gerry Devlin, Chair




Amd. Coord.
Sec. of Senate


Senator Carrying Bill

611118SC.SPV

HOUSE BILL NO. 570

INTRODUCED BY WISEMAN, FISHER, EWER

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE TAXATION OF REGULATED INVESTMENT COMPANIES AND THEIR SHAREHOLDERS; AMENDING SECTIONS 15-30-111, 15-31-113, 15-31-114, AND 15-31-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, ~~or~~ as that section may be labeled or amended, and in addition ~~shall include~~ includes the following:

(a)(i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof EXCEPT to the extent that the interest is exempt from taxation BY MONTANA under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of ~~even~~ the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a)(i) all interest income from obligations of the United States government, the state of Montana,

1 county, municipality, district, or other political subdivision thereof and any other interest income that is
2 exempt from taxation by the states MONTANA under federal law;

3 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986,
4 as that section may be amended or renumbered, that are attributable to the interest referred to in
5 subsection (2)(a)(i);

6 (b) interest income earned by a taxpayer age who is 65 years of age or older in a taxable year up
7 to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

8 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
9 received as defined in 15-30-101;

10 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

11 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
12 amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess
13 of \$30,000 as shown on the taxpayer's return;

14 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
15 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided
16 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of
17 \$30,000 as shown on their joint return;

18 (d) all Montana income tax refunds or tax refund credits;

19 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

20 (f) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and
21 applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises
22 licensed to provide food, beverage, or lodging;

23 (g) all benefits received under the workers' compensation laws;

24 (h) all health insurance premiums paid by an employer for an employee if attributed as income to
25 the employee under federal law; and

26 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against
27 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

28 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l)
29 shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as
30 provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election

1 is effective.

2 (4) A taxpayer who, in determining federal adjusted gross income, has reduced his business
3 deductions by an amount for wages and salaries for which a federal tax credit was elected under section
4 44B of the Internal Revenue Code of 1954, ~~or~~ as that section may be labeled or amended, is allowed to
5 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be
6 made in the year the wages and salaries were used to compute the credit. In the case of a partnership or
7 small business corporation, the deduction must be made to determine the amount of income or loss of the
8 partnership or small business corporation.

9 (5) Married taxpayers filing a joint federal return who ~~must~~ include part of their social security
10 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the
11 federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad
12 retirement benefits when they file separate Montana income tax returns. The federal base must be split
13 equally on the Montana return.

14 (6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of
15 the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross
16 income up to \$100 per week received as wages or payments in lieu of wages for a period during which the
17 employee is absent from work due to the disability. If the adjusted gross income before this exclusion and
18 before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the
19 exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's
20 eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
21 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined
22 adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable
23 to engage in any substantial gainful activity by reason of any medically determined physical or mental
24 impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of
25 contingency--sec. 3, Ch. 634, L. 1983.)"

26

27 **Section 2.** Section 15-31-113, MCA, is amended to read:

28 "15-31-113. **Gross income and net income.** (1) The term "gross income" means all income
29 recognized in determining the corporation's gross income for federal income tax purposes and:

30 (a) including:

(i) interest exempt from federal income tax and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, ~~as those sections may be amended or renumbered,~~ attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; and

(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, ~~as those sections may be amended or renumbered,~~ when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) ~~No~~ A corporation is not exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year."

Section 3. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions ~~shall be~~ are allowed from the gross income received by ~~each~~ the corporation within the year from all sources:

~~(1) (a)~~ (a) ~~All~~ all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation ~~hereinafter~~ contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. ~~No~~ A deduction ~~shall be~~ is not allowed for salaries paid upon which the recipient ~~thereof~~ has not paid Montana state income

1 tax, ~~provided, however~~ However, ~~that where~~ when domestic corporations are taxed on income derived
 2 from ~~without~~ outside the state, salaries of officers paid in connection with securing ~~such~~ the income shall
 3 ~~be~~ are deductible.

4 ~~(2) (a) (b) (i)~~ All ~~all~~ losses actually sustained and charged off within the year and not compensated
 5 by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of
 6 property used in the trade or business, ~~such~~. The allowance ~~to be~~ is determined according to the provisions
 7 of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for
 8 depreciation shall must be the same as the elections made for federal income tax purposes. ~~No~~ A deduction
 9 ~~shall be~~ is not allowed for any amount paid out for any buildings, permanent improvements, or betterments
 10 made to increase the value of any property or estate, and ~~no~~ a deduction shall may not be made for any
 11 amount of expense of restoring property or making good the exhaustion ~~thereof~~ of property for which an
 12 allowance is or has been made. ~~No~~ A depreciation or amortization deduction shall ~~be~~ is not allowed on a
 13 title plant as defined in 33-25-105(15).

14 ~~(b) (ii)~~ There ~~shall be~~ is allowed as a deduction for the taxable period a net operating loss deduction
 15 determined according to the provisions of 15-31-119.

16 ~~(3) (c)~~ In ~~in~~ the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable
 17 allowance for depletion and for depreciation of improvements, ~~such~~. The reasonable allowance ~~to~~ must be
 18 determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All
 19 elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and
 20 development costs and intangible drilling expenses for corporation license tax purposes shall must be the
 21 same as the elections made for federal income tax purposes.

22 ~~(4) (d)~~ The amount of interest paid within the year on its indebtedness incurred in the operation
 23 of the business from which its income is derived, ~~but no interest shall~~. Interest may not be allowed as a
 24 deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property
 25 or for the conduct of business unless the income from ~~such~~ the property or business would be taxable
 26 under this part.

27 ~~(5) (a) (e) (i)~~ Taxes ~~taxes~~ paid within the year, except the following:

28 ~~(i) (A)~~ Taxes ~~taxes~~ imposed by this part;

29 ~~(ii) (B)~~ Taxes ~~taxes~~ assessed against local benefits of a kind tending to increase the value of the
 30 property assessed;

1 ~~(iii)~~ (C) ~~Taxes~~ taxes on or according to or measured by net income or profits imposed by authority
2 of the government of the United States;

3 ~~(iv)~~ (D) ~~Taxes~~ taxes imposed by any other state or country upon or measured by net income or
4 profits.

5 ~~(b)~~ (ii) Taxes deductible under this part ~~shall~~ must be construed to include taxes imposed by any
6 county, school district, or municipality of this state.

7 ~~(6)~~ (f) ~~That~~ that portion of an energy-related investment allowed as a deduction under 15-32-103;

8 ~~(7)~~ (a) (g) (i) ~~Except~~ except as provided in subsection ~~(b)~~ (1)(g)(ii), charitable contributions and gifts
9 that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

10 ~~(b)~~ (iii) The public service commission ~~shall~~ may not allow in the rate base of a regulated corporation
11 the inclusion of contributions made under this subsection.

12 ~~(8)~~ (2) In lieu of the deduction allowed under subsection ~~(7)~~ (1)(g), the taxpayer may deduct the
13 fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated
14 technological equipment or apparatus intended for use with the computer donated to an elementary,
15 secondary, or accredited postsecondary school located in Montana if:

16 (a) the contribution is made no later than 5 years after the manufacture of the donated property
17 is substantially completed;

18 (b) the property is not transferred by the donee in exchange for money, other property, or services;
19 and

20 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept
21 the property and representing that the use and disposition of the property will be in accordance with the
22 provisions of ~~(b)~~ of this subsection ~~(8)~~ (2)(b).

23 (3) In the case of a regulated investment company or a fund of a regulated investment company,
24 as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be
25 amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the
26 Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction
27 for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax
28 under this chapter when earned by the regulated investment company. For the purposes of computing the
29 deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code
30 of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is

1 not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal
2 Revenue Code of 1986, as those sections may be amended or renumbered."
3

4 **Section 4.** Section 15-31-119, MCA, is amended to read:

5 **"15-31-119. Net operating losses -- carryovers and carrybacks.** (1) The net operating loss
6 deduction is the aggregate of net operating loss carryovers to the taxable period plus the net operating loss
7 carrybacks to the taxable period.

8 (2) The term "net operating loss" means the excess of the deductions allowed by this section over
9 the gross income, with the modifications specified in subsection (6).

10 (3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained,
11 the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable
12 period of the loss and must be a net operating loss carryover to each of the five taxable periods following
13 the taxable period of the loss.

14 (4) A net operating loss for any taxable period ending after December 31, 1975, in addition to
15 being a net operating loss carryback to each of the three preceding taxable periods, must be a net operating
16 loss carryover to each of the seven taxable periods following the taxable period of the loss.

17 (5) Except as provided in subsection (11), the portion of the loss that must be carried to each of
18 the other taxable years must be the excess, if any, of the amount of the loss over the sum of the net
19 income for each of the prior taxable periods to which the loss was carried. For purposes of ~~the preceding~~
20 ~~sentence~~ this subsection, the net income for the prior taxable period must be computed with the
21 modification specified in subsection (6)(b) and by determining the amount of the net operating loss
22 deduction without regard to the net operating loss for the loss period or any taxable period ~~thereafter~~ after
23 the loss period, and the net income so computed may not be considered to be less than zero.

24 (6) The modifications referred to in subsection (2) are as follows:

25 (a) The net operating loss deduction may not be allowed.

26 (b) The deduction for depletion may not exceed the amount that would be allowable if computed
27 under the cost method.

28 (c) Any net operating loss carried over to any taxable ~~years beginning after December 31, 1978,~~
29 year must be calculated under the provisions of this section effective for the taxable year for which the
30 return claiming the net operating loss carryover is filed.

1 (7) A net operating loss deduction ~~must~~ may be allowed only with regard to losses attributable to
2 the business carried on within the state of Montana.

3 (8) In the case of a merger of corporations, the surviving corporation may not be allowed a net
4 operating loss deduction for net operating losses sustained by the merged corporations prior to the date
5 of merger. In the case of a consolidation of corporations, the new corporate entity may not be allowed a
6 deduction for net operating losses sustained by the consolidated corporations prior to the date of
7 consolidation.

8 (9) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund
9 of tax resulting from a net operating loss carryback or carryover.

10 (10) The net operating loss deduction ~~may not be allowed with respect to taxable periods that~~
11 ~~ended on or before December 31, 1970, but~~ must be allowed only with respect to taxable periods beginning
12 on or after January 1, 1971.

13 (11) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire
14 carryback period. If the election is made, the loss may be carried forward only. The election must be made
15 on or before the date on which the return is due, including any extension of the due date, for the tax year
16 of the net operating loss for which the election is to be in effect. The election is irrevocable for the year
17 made.

18 (12) Notwithstanding any other provision of this section, the net operating loss deduction is not
19 allowed in the case of a regulated investment company or a fund of a regulated investment company, as
20 defined in section 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended
21 or renumbered."

22
23 **NEW SECTION.** Section 5. Effective date -- retroactive applicability. [This act] is effective on
24 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after
25 December 31, 1994.

26 -END-